ATTORNEY FOR APPELLANT:

KATHY BRADLEY
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

STEVE CARTER
Attorney General of Indiana

ANGELA N. SANCHEZ
Deputy Attorney General
Indianapolis, Indiana

IN THE COURT OF APPEALS OF INDIANA

JERRY PETTIGREW,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0804-CR-327
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Stanley Kroh, Commissioner
The Honorable Sheila A. Carlisle, Judge
Cause No. 49G03-0711-FC-248628

October 30, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Defendant Jerry Pettigrew appeals following his conviction pursuant to a plea agreement to Burglary as a Class C felony,[1] for which he received an eight-year sentence in the Department of Correction, with three years executed and five years suspended. The trial court ordered Pettigrew to serve the first two years of the executed portion of his sentence in the Department of Correction and the third year through Community Corrections Work Release. Upon appeal, Pettigrew challenges the appropriateness of his placement in the Department of Correction and Community Corrections for the three-year executed portion of his sentence. We affirm.

FACTS AND PROCEDURAL HISTORY

According to the factual basis entered at the time of Pettigrew's plea, on November 21, 2007, Pettigrew and three other persons entered onto property owned by Schell Excavating located at 1105 S. Dequincy Avenue in Indianapolis without permission from Schell Excavating owner Kevin Schell. Following reports of trespassers, which led to Pettigrew's and the others' apprehension, Schell found that certain items located within a trailer on the property had been moved without his permission, indicating Pettigrew's attempted theft of these items.

On November 26, 2007, the State charged Pettigrew with Class C felony burglary, Class D felony attempted theft, and Class A misdemeanor resisting law enforcement. On February 28, 2008, Pettigrew entered into a plea agreement with the State whereby he agreed to plead guilty to Class C felony burglary, and the State agreed to drop all remaining charges. As an additional term of the plea agreement, the parties agreed that

[1] Ind. Code § 35-43-2-1 (2007).

the State would recommend an eight-year sentence with three years executed, but that these three years would be "open to placement." App. p. 36. The trial court accepted Pettigrew's plea during a March 7, 2008 plea hearing and sentenced him to eight years, with three years executed, two in the Department of Correction and one in Community Corrections Work Release, and five years suspended, two to probation. This appeal follows.

DISCUSSION AND DECISION

Pettigrew's sole challenge on appeal is to his placement, during the three-year executed portion of his sentence, in the Department of Correction and Community Corrections Work Release. Pettigrew contends that he is entitled to less-restrictive placement such as home detention. Article VII, Sections 4 and 6 of the Indiana Constitution "'authorize[] independent appellate review and revision of a sentence imposed by the trial court.'" *Anglemyer v. State*, 868 N.E.2d 482, 491 (Ind. 2007) (quoting *Childress v. State*, 848 N.E.2d 1073, 1080 (Ind. 2006) (emphasis and internal quotations omitted)). Such appellate authority is implemented through Indiana Appellate Rule 7(B), which provides that the "Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." We exercise deference to a trial court's sentencing decision, both because Rule 7(B) requires that we give "due consideration" to that decision and because we recognize the unique perspective a trial court has when making sentencing decisions. *Stewart v. State*, 866

N.E.2d 858, 866 (Ind. Ct. App. 2007). It is the defendant's burden to demonstrate that his sentence is inappropriate. *Childress*, 848 N.E.2d at 1080.

The location where a sentence is to be served is an appropriate focus for application of our review and revise authority under Rule 7(B). *See Biddinger v. State*, 868 N.E.2d 407, 414 (Ind. 2007). Because the question under Rule 7(B) is not whether another sentence is *more* appropriate but whether the sentence imposed is inappropriate, it is difficult as a general matter for a defendant to prevail on a claim that the placement of his sentence is inappropriate. *See Fonner v. State*, 876 N.E.2d 340, 343-44 (Ind. Ct. App. 2007).

Pettigrew argues, with respect to the nature of his offense, that it was nonviolent and resulted in a minimal amount of property damage, specifically a damaged lock. Regardless of the material impact of this offense, this is Pettigrew's third burglary conviction. In addition, as Pettigrew admits, he and his cohorts fled from authorities. In light of the number of times Pettigrew has committed this crime and his efforts to avoid detection, we are unpersuaded that this burglary is somehow less serious in nature or that it warrants less-restrictive placement.

With respect to Pettigrew's character, we need look no further than his extensive criminal history to conclude that his relatively minimal executed sentence of two years in the Department of Correction and one year in Community Corrections Work Release is not inappropriate. Prior to the instant case, Pettigrew had felony convictions for robbery and two counts of burglary. In addition, Pettigrew has misdemeanor convictions for theft, two counts of resisting law enforcement, domestic battery, two counts of operating

a vehicle while intoxicated, and three counts of public intoxication. Further, even if Pettigrew's entire criminal history were attributable to his admitted substance abuse problem, Pettigrew fails to demonstrate that his only opportunity for treatment is through less-restrictive placement such as home detention. Indeed, in placing Pettigrew in the Department of Correction and Community Corrections, the trial court fully intended that Pettigrew receive treatment, articulating its recommendation that he seek treatment at both the Department of Correction and Community Corrections. In light of Pettigrew's extensive criminal history and his substance abuse problems, we are unconvinced that he deserves a less-restrictive placement or that such placement is necessary, or for that matter, better-suited, to address his substance-abuse needs.

The judgment of the trial court is affirmed.

RILEY, J., and BAILEY, J., concur.